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May 13, 2002

Dear Xxxxx:

This letter is in response to your letter dated April 4, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

I was hoping that you could assist me with some sales tax questions I have. I attended 'Sales and Use Tax in Illinois' seminar in Peoria last year. There were a number of statements that were made at the seminar that has raised some questions on sales tax collection and the rate on which to collect. I would appreciate answers to these specific questions and the code section that relates to each on sales tax collection and payment.

My Questions are:

1. What is the determining factor for the rate at which you collect the Retailers' Occupation Tax?

For retailers located in Illinois is the location where the sale is made by the retailer, the location of the customer or the place of delivery the controlling factor in determining the sales tax rate to charge? This means is the taking possession of the item at the retailer location or the customer location the key factor.

If the delivery location is the determining factor, are retailers required to keep track of every sale in every county and use the rates for each county per month?

2. A comment was made regarding titled purchases. The way it sounded to me was, if a company bought a piece of equipment and titled this in a county with a lower rate, you would charge the customer the tax rate in the county it was titled. The location of the sale and the rate in the county it was sold or acquired was not the major factor to determine rate.

Is this correct?

3. A planning idea was given on purchasing items at a lower rate. The example was for a company in a high rate area to set up a purchasing location in a low rate

area. The idea was to pay a lower sales tax rate on sales and use tax on sales and purchases by taking the order in lower rate county.

If that is the case then wouldn't the rate of sales tax be the location where purchaser is located at the time of the order be the factor in determining the rate instead of the location where ownership transfer took place for 'Retailers' Occupation Tax' and 'Use Tax'?

4. On sales made by out of state retailers into Illinois what is the rate to collect? On preprinted forms the rate is 6.25%. However, items maybe sold in counties with higher local sales taxes. Does the responsibility for the collection of the additional taxes fall on the Illinois customer or is the out of state retailer responsible for collecting this additional tax for the local counties?
5. Lastly, on the Use Tax pre-printed forms (ST-1) the rate is 6.25%. Are consumers to be submitting this amount only or are they to be submitting the 6.25% plus the local rate?

Could you also provide me with the Illinois code section for each question noted above?

I greatly appreciate your assistance with these questions because after this seminar I wanted to verify that my thinking on collecting sales tax is accurate.

For your general information, please see the enclosed copy of Sec. 270.115 of the Home Rule Municipal Retailers' Occupation Tax for guidance concerning jurisdictional questions. In general, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred. Although 86 Ill. Adm. Code 270.115 deals with the municipal Home-Rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

If a purchase order is accepted outside the State, but the property being sold is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes.

For example, if a purchase order is accepted by a sales representative in City A, Illinois, then the sale would be considered to have taken place in City A. In that instance, the retailer will incur the State rate of tax (6.25%) plus any local taxes imposed in that jurisdiction.

If the purchase order is accepted at the customer service office location outside of this State but the order is filled from an inventory of the retailer located in Illinois (such as a shipping center in City B, Illinois), then the sale will be considered to have taken place in the location of the Illinois

inventory (City B, Illinois). In that instance, the retailer will incur the State rate of tax (6.25%) plus any local taxes imposed in that jurisdiction.

If the purchase order is accepted at the customer service office location outside of this State and the order is filled from an inventory located outside of this State, then the sale will be considered to have occurred outside of this State. In that instance, only the State rate of tax (6.25%) will apply.

In addition to the Home Rule Municipal Retailer's Occupation Tax discussed above, the Home Rule Municipal Use Tax Act is found at 65 ILCS 5/8-11-6. The Home Rule Municipal Use Tax is based on the location where the motor vehicle is titled and registered.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 295 which are the administrative regulations relating to the Act. As you will note, the regulations at Section 295.101 provide that, "[t]he corporate authorities of a home rule municipality may impose a tax upon the privilege of using, in such municipality, any item of tangible personal property which is purchased at retail from a retailer, and which is titled or registered at a location within the corporate limits of such home rule municipality with an agency of this State's government....If a municipality having 2,000,000 or more inhabitants imposes the tax authorized...then the tax shall be collected by the Illinois Department of Revenue when the property is purchased at retail from a retailer in the county in which the home rule municipality imposing the tax is located, and in all contiguous counties."

In home rule municipalities with less than 2,000,000 inhabitants, the tax is collected by the municipality imposing the tax from persons whose Illinois address for titling or registration purposes is given as being such municipality.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

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Enc.